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HIGH COURT OF CHHATTISGARH AT BILASPUR

W. P. (S) No. 4960 of 2006

Petitioner		Teklal Mishra, son of late Shri Ganganand Prasad Mishra, aged about 61 years, retired Driver, resident of Shanti Nagar, Sakari, Distt. Bilaspur (C.G.)
	Versus	
Respondents	1.	The State of Chhattisgarh, Throug: It's Secretary, Department of Forest, D.K.S. Bhavan, Raipur (C.G.)
	2.	The Divisional Forest Officer, Bilaspur Forest Division, Distt. Bilaspur (C.G.).
	3.	The Joint Director (Treasuries, Accounts and Pension) Bilaspur Division, Distt. Bilaspur (C.G.).
	4.	The District Treasury Officer, Distt. Bilaspur (C.G.)

WRIT PETITION UNDER ARTICLES 226/227 OF THE COSTITUTION OF INDIA

SB: Hon'ble Mr. Justice **Satish K. Agnihotri**

Shri Sameer Behar, Advocate for the petitioner.

Smt. Anju Ahuja, Deputy Govt. Advocate for the respondents.

ORDER

(Passed on this 23rd day of April, 2007)

1. By this petition, the petitioner has prayed for a suitable writ or direction to quash the order dated 27th July, 2005 (Annexure P/1), passed by the respondent No.2 directing for recovery of a sum of Rs. 94,812/-, from the retiral dues of the petitioner, because this amount was wrongly paid to the petitioner owing to incorrect fixation of salary.

2. The brief facts, in nutshell, are that the petitioner was appointed on the post of Driver on fixed pay w.e.f. 12.3.1968. Thereafter, since 1.3.1977 the petitioner's services were regularized and he was granted regular pay scale. The salary of the petitioner was revised,

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time to time and he was granted increments. The petitioner was retired from service on attaining the age of superannuation w.e.f. 31.7.2005. After retirement of the petitioner from service, the respondent No.2 passed the order dated 27.7.2005 (Annexure P/1) directing for one time recovery of Rs. 94,812/- from the retiral dues of the petitioner, as this amount was paid due to wrong fixation of pay of the petitioner.

3. Shri Sameer Behar, learned counsel appearing for the petitioner submits that there is no fault on the part of the petitioner, as the petitioner was getting the salary, as fixed from time to time, by the respondents. After a period of 30 years, the respondents cannot recover the amount, if any, from the retiral dues of the petitioner, without affording an opportunity of hearing to the petitioner. The respondents have also not proved that the excess payment was made after giving any opportunity of hearing to the petitioner. To substantiate his submissions, learned counsel appearing for the petitioner cited a decision of this Court in the case of **Vidya Shankar Tiwari Vs. State of M.P. (Now State of Chhattisgarh) and others,** reported in 2006 (2) M.P.H.T. 31 (CG).

4. In the case of **Vidya Shankar Tiwari** (Supra), after a period of four years from the date of fixation of salary of the petitioner, he was directed to deposit the excess amount. This Court held that for the mistake of the respondent/employer, the petitioner could not be penalized without following principles of natural justice. Before asking the petitioner for making refund of extra payment, no opportunity of hearing was afforded to the petitioner. The petitioner had adjusted himself to the facts of the case and had utilized the money what was legally and duly paid to him. No opportunity of hearing was given to the petitioner before the impugned order was

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passed and as such the same is unreasonable, arbitrary and deserves to be quashed.

5. In view of the foregoing, this petition is allowed. The impugned order dated 27.7.2005 (Annexure P/1) is quashed. The respondents are directed to refund the amount, if any, recovered pursuant to the order dated 27.7.2005 from the petitioner. The amount, if any, recovered from the petitioner shall carry the interest as applicable in savings bank account of nationalized bank, from the date of recovery till its payment. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Thakur